

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEO GUY, et al.,

Plaintiffs,

v.

CONVERGENT OUTSOURCING,
INC.,

Defendant.

CASE NO. C22-1558 MJP

ORDER GRANTING RENEWED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

This matter comes before the Court on Plaintiffs' Renewed Unopposed Motion for Preliminary Approval of Class Action Settlement. (Dkt. No. 61.) Having reviewed the Motion and all supporting materials, the Court GRANTS the Motion.

BACKGROUND

In considering Plaintiffs' initial motion for preliminary approval, the Court granted Plaintiffs' request for certification of a settlement class. (Order on Motion for Preliminary Approval of Class Action Settlement at 3-8 (Dkt. No. 58).) The Court found the named plaintiffs

adequate class representatives, appointed Plaintiffs' counsel as class counsel, and certified the following settlement class:

All persons residing in the United States to whom Defendant Convergent Outsourcing, Inc. sent notification that their personal information may have been compromised by unauthorized third parties as a result of the data security incident discovered by Convergent on or about June 17, 2022.

(Id. at 8.) But the Court denied Plaintiffs' request for preliminary approval without prejudice for two reasons: (1) the scope of the release was overbroad; and (2) the proposed notice lacked any information about the attorneys' fees and costs that counsel might seek from the settlement fund.

(Id. at 10-12.)

The Parties have now revised the settlement agreement, which narrows the scope of the release. Initially, the release applied to:

any and all claims, demands, actions or causes of action with respect to the Data Incident, whether known or unknown, that have been asserted in the Litigation, or that could have been asserted, that arise out of or relate to the causes of action, allegations, practices, or conduct at issue in the Litigation related to Convergent or the Data Incident.

(Dkt. No. 56-2 at 10.) The Court found particularly problematic the following portion of the release: "... that arise out of or relate to the causes of action, allegations, practices, or conduct at issue in the Litigation related to Convergent or the Data Incident." (Order at 11.) The release has now been modified to apply to:

any and all claims, demands, actions or causes of action with respect to the Data Incident, whether known or unknown, that have been asserted in the Litigation, or that could have been asserted, that arise out of or relate to the causes of action, allegations, practices, or conduct at issue in the Litigation.

(Dkt. No. 62-1 at 10.)

The Court also notes that Plaintiffs' counsel has now revealed that its request for attorneys' fees and costs will not exceed 27% of the \$2.45 million settlement fund—that is,

1 \$661,500. (Renewed Mot. at 7 (Dkt. No. 61).) Counsel has also provided notice Plaintiffs wish to
 2 apply for \$1,500 service fee awards to the named plaintiffs. (*Id.*)

3 The Court notes that the revised settlement agreement still provides for the same relief
 4 that the initial settlement agreement provided to the approximately 640,906 individuals in the
 5 settlement class. The revised settlement allows for settlement class members to file one of three
 6 different types claims for payment out of the settlement fund. (Revised Settlement Agreement ¶¶
 7 4.2.) A class member may seek up to \$1,500 for “ordinary” out-of-pocket expenses related to the data
 8 breach or up to \$10,000 for “extraordinary” out-of-pocket expenses. (Revised Settlement Agreement
 9 ¶¶ 4.21, 4.2.3.) As a third option, class members may elect to file a claim for an alternative pro rata
 10 share of the settlement fund. (Revised Settlement Agreement ¶ 4.2.4.) If the total dollar value of the
 11 claims exceeds the amount remaining in the settlement fund necessary to cover the attorneys’ fees
 12 and costs, class representative’s service award, and administrative costs, then the payment amount
 13 for claims “shall be reduced pro rata” among those who submit claims for ordinary or extraordinary
 14 losses, and those who seek the alternative pro rata share will receive nothing. (Revised Settlement
 15 Agreement ¶ 4.4.)

16 Lastly, the Court notes that Plaintiffs have provided draft long, short, and summary notice
 17 forms that are intended to provide notice to members of the settlement class. (*See* Exs. B and C to the
 18 Declaration of Gary Klinger (Dkt. No. 62-1 at 36-54).)

19 ANALYSIS

20 A. Legal Standard

21 A proposed class action may not be settled on a classwide basis without court approval.
 22 Fed. R. Civ. P. 23(e). Before approving a settlement, the Court must determine whether to order
 23 notice of the proposed settlement to the class. Fed. R. Civ. P. 23(e)(1). This requires the parties
 24 to “provide the Court with information sufficient to enable it to determine whether to give notice

1 of the proposal to the class.” Fed. R. Civ. P. 23(e)(1)(A). Notice must be given if the parties
 2 show that “the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii)
 3 certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B).

4 Under Rule 23(e)(2), the Court must determine whether the proposed settlement taken as
 5 a whole is “fair, adequate, and reasonable.” Fed. R. Civ. P. 23(e)(2); Hanlon v. Chrysler Corp.,
 6 150 F.3d 1011, 1026 (9th Cir. 1988), overruled on other grounds by Wal-Mart Stores, Inc. v.
 7 Dukes, 564 U.S. 338 (2011). “[S]ettlements that occur before class certification are subject to a
 8 high procedural standard.” Kim v. Allison, 8 F.4th 1170, 1178 (9th Cir. 2021) (quotation
 9 omitted). “The district court must act as a fiduciary, protecting the interests of absent class
 10 members by scrutinizing the settlement's fairness in light of well-established factors.” Id. To
 11 assess whether a proposed settlement comports with Rule 23(e)(2), the Court considers: “(1) the
 12 strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further
 13 litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount
 14 offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6)
 15 the experience and views of counsel; (7) the presence of a governmental participant; and (8) the
 16 reaction of the class members of the proposed settlement.” Kim, 8 F.4th at 1178 (quotation and
 17 citation omitted). And when settlement happens before class certification, approval is contingent
 18 not only on a thorough assessment of these eight factors, but also a finding that the settlement “is
 19 not[] the product of collusion among the negotiating parties.” In re Bluetooth Headset Prod.
 20 Liab. Litig., 654 F.3d 935, 946-47 (9th Cir. 2011) (quotation and citation omitted).

21 **B. Preliminary Approval of Settlement and Notice**

22 The Court finds that notice of the revised settlement should be given to the settlement
 23 class, given that the proposed settlement appears likely to be found fair, reasonable, and
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adequate. See Fed. R. Civ. P. 23(e)(1)(B). Based on the record presented to the Court, it appears the settlement was negotiated at arm's length by informed and experienced counsel through the assistance of experienced and impartial mediator. Though subject to final approval, it appears that the relief provided to the class under the settlement is adequate, particularly when considering the costs, risks, and delay associated with proceeding to trial and potential appeal. The method proposed for distributing relief to the settlement classes and processing claims also appears adequate and effective, though the Court will entertain any objections to the methodology used and the results achieved. Finally, the Court finds that the proposed settlement appears to treat settlement class members equitably relative to each other. The revised settlement therefore meets the criteria for preliminary approval, and notice should be given to the settlement class. Accordingly, the Court preliminarily approves the terms of the revised settlement agreement and ORDERS Plaintiffs to provide notice to the settlement class using the notice forms proposed by Plaintiffs. The Court notes that the settlement class is the same class the Court previously approved in its Order on the initial Motion for Preliminary Approval. (Dkt. No. 58.)

The Court finds that the form, content, and method of giving notice to the settlement class as described in the notice plan submitted with the renewed motion for preliminary approval: (a) constitute the best practicable notice to the settlement class; (b) are reasonably calculated, under the circumstances, to apprise settlement class members of the pendency of the action, the terms of the proposed revised settlement, and class members' rights under the proposed revised settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Federal Rule of Civil Procedure 23 and due process. The Court further finds that the notices are written in

1 plain language, use simple terminology, and are designed to be readily understandable by
2 settlement class members.

3 Non-material modifications to the notices may be made without further order of the Court.
4 As requested, the Court appoints Epiq as the Settlement Administrator, who shall be supervised
5 by Plaintiffs' counsel and the Court. The Settlement Administrator is directed to carry out the
6 notice plan in conformance with the revised settlement agreement and to perform all other tasks
7 that the revised settlement agreement requires. Prior to the Final Approval Hearing, class counsel
8 shall cause to be filed with the Court an appropriate declaration with respect to complying with
9 the provisions of the notice plan.

10 **C. Notice Date**

11 The Court directs the Settlement Administrator to cause a copy of the notice to be mailed
12 to all potential settlement class members in the manner outlined in the revised settlement
13 agreement. The mailing is to be made by first class United States mail and via email to potential
14 settlement class members where an existing email address is available, within thirty (30)
15 calendar days following the entry of this Order (the "Notice Date"). The settlement website shall
16 include, and make available for download, copies of the revised settlement agreement and long
17 form notice.

18 **D. Funds Held by Settlement Administrator**

19 All funds held by the Settlement Administrator shall be deemed and considered to be in
20 custodia legis of the Court and shall remain subject to the jurisdiction of the Court until such
21 time as the funds are distributed pursuant to the revised settlement or further order of the Court.
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E. Deadline to Submit Claim Forms

Plaintiffs propose to allow settlement class members ninety (90) calendar days from the Notice Date to submit their claim forms. The Court finds this request is reasonable and allows for sufficient time to file claims. The Court therefore allows settlement class members 90 days from the Notice Date to submit claim forms. This is the “Claims Deadline.”

F. Exclusions

The Court agrees with Plaintiffs’ proposed exclusion methodology. Any settlement class member that wishes to be excluded from the settlement class must mail an exclusion letter to the settlement administrator at the addresses provided in the Notice, postmarked no later than the deadline to opt-out, as specified on the Notice, and sent via first class postage pre-paid U.S. mail. The exclusion letter must: (a) state the settlement class member’s full name, address, and telephone number; (b) state the name and number of this case, Guy et al. v. Convergent Outsourcing Inc., Case No. 2:22-cv-01558-MJP; (c) contain the settlement class member’s personal and original signature or the original signature of a person authorized by law to act on the settlement class member’s behalf with respect to a claim or right such as those asserted in the litigation, such as a trustee, guardian or person acting under a power of attorney; and (d) state unequivocally the settlement class member’s intent to be excluded from the settlement. To be valid, each individual class member who seeks exclusion must file an individual request for exclusion—in other words, a class member may not request exclusion for anyone other than for that the class member.

Any settlement class member who does not timely and validly exclude themselves from the settlement shall be bound by the terms of the revised settlement agreement. If final judgment is entered, any settlement class member who has not submitted a timely, valid written notice of

1 exclusion from the settlement class shall be bound by all subsequent proceedings, orders, and
2 judgments in this matter, including but not limited to the release set forth in the revised settlement
3 agreement.

4 **G. Objections**

5 Any settlement class member may enter an appearance in the action, at his or her own
6 expense, individually or through counsel of his or her own choice. If a settlement class member
7 does not enter an appearance, they will be represented by class counsel.

8 Any settlement class member who wishes to may file objections to the revised settlement,
9 the settlement benefits, service awards, and/or the attorneys' fees and costs. Any settlement class
10 member may also appear at the Final Approval Hearing and show cause as to why the revised
11 settlement should not be approved as fair, reasonable, and adequate to the settlement class, why a
12 final approval order and judgment should not be entered thereon, why the settlement benefits
13 should not be approved, or why the service awards and/or the attorneys' fees and costs should not
14 be granted. Unless the Court orders otherwise, no settlement class member will be heard on such
15 matters unless they have filed in this action the objection, together with any briefs, papers,
16 statements, or other materials the settlement class member wishes the Court to consider, within
17 sixty (60) calendar days following the Notice Date. Any objection must include: (i) the objector's
18 full name, address, telephone number, and e-mail address (if any); (ii) the name and number of
19 this case, Guy et al. v. Convergent Outsourcing Inc., Case No. 2:22-cv-01558-MJP; (iii)
20 information identifying the objector as a settlement class member, including proof that the objector
21 is a member of the settlement class; (iv) a statement as to whether the objection applies only to the
22 settlement class member, to a specific subset of the settlement class, or to the entire settlement
23 class; (v) a written statement of the specific legal and factual bases for each and every objection,
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1 accompanied by any legal support for the objection the objector believes applicable; (vi) the
2 identity of any counsel representing the objector; (vii) a statement whether the objector intends to
3 appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel,
4 identifying that counsel; (viii) a list of all persons who will be called to testify at the Final Approval
5 Hearing in support of the objections and any documents to be presented or considered; and (ix) the
6 objector's signature and the signature of the objector's duly authorized attorney or other duly
7 authorized representative (if any). In addition to the foregoing requirements, if an objecting
8 settlement class member intends to speak at the final approval hearing (whether pro se or through
9 an attorney), the written objection must include a detailed description of any evidence the objecting
10 settlement class member may offer at the Final Approval Hearing, as well as copies of any exhibits
11 the objecting settlement class member may introduce at the Final Approval Hearing. Unless the
12 Court orders otherwise, any settlement class member who fails to object to the revised settlement
13 in the manner described in the revised settlement Agreement and in the notice provided pursuant
14 to the Notice Plan shall be deemed to have waived any such objection, shall not be permitted to
15 object to any terms or approval of the revised settlement at the Final Approval Hearing, and shall
16 be precluded from seeking any review of the revised settlement or the terms of the revised
17 settlement agreement by appeal or any other means.

18 With leave of Court for good cause shown, the Parties may take discovery of an objector
19 or an objector's counsel. Any settlement class member that fails to comply with the provisions in
20 this Order will waive and forfeit any and all rights it may have to object, and shall be bound by all
21 the terms of the revised settlement, this Order, and by all proceedings, orders, and judgments,
22 including, but not limited to, the releases in the revised settlement, if finally approved. Any
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1 potential settlement class member who both objects to the revised settlement and submits an
 2 exclusion letter will be deemed to have opted-out and the objection shall be deemed null and void.

3 **H. Final Approval Hearing**

4 A hearing will be held by this Court in the Courtroom of The Honorable Marsha J.
 5 Pechman, United States District Court for the Western District of Washington, United States
 6 Courthouse, 700 Stewart Street, Courtroom 14B (14th Floor), Seattle, WA 98101 at 10:00 a.m.
 7 on July 19, 2024 (“Final Approval Hearing”), to determine: (a) whether the revised settlement
 8 should be approved as fair, reasonable, and adequate to the class; (b) whether the Final Approval
 9 Order should be entered in substance materially the same as Exhibit 4 to the revised settlement
 10 agreement; (c) whether the revised settlement agreement should be approved as fair, reasonable,
 11 and adequate to the settlement class; (d) whether to approve the application for service awards
 12 for the named plaintiffs and an award of attorneys’ fees and litigation expenses; and (e) any other
 13 matters that may properly be brought before the Court in connection with the settlement. The
 14 Final Approval Hearing is subject to continuation or adjournment by the Court. The Court may
 15 approve the revised settlement with such modifications as the Parties may agree to, if
 16 appropriate, without further notice to the class.

17 With regard to briefing in support of final approval, all opening briefs and supporting
 18 documents in support of a request for final approval of the revised settlement and settlement
 19 benefits must be filed and served at least thirty (30) days prior to the Final Approval Hearing. All
 20 briefing and supporting documents in support of an application for attorneys’ fees and costs and
 21 named plaintiff service awards must be filed thirty (30) days prior to the Objection Deadline. The
 22 deadline to file responses, if any, to any objections, and any replies in support of final approval
 23 of the revised settlement and/or class counsel’s application for attorneys’ fees, costs, and the
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named plaintiff service awards must be filed and served at least fourteen (14) days prior to the Final Approval Hearing.

Prior to the Final Approval Hearing, class counsel and Defendant shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with the provision of notice as set forth in Section 2(b) of the Settlement.

I. Summary of Deadlines and Stay of Existing Case Schedule

Pending the Final Approval Hearing, all existing case deadlines are hereby stayed, except the settlement-related deadlines set forth in this Order. For summary purposes, those deadlines are as follows:

Action	Date
Defendant Provides Class List	Within 10 business days following entry of this Order
Notice Deadline	30 days following entry of this Order
Motion for Attorneys' Fees, Costs, and Service Awards Due	30 days prior to the Objection Deadline
Exclusion/Opt-Out Deadline	60 days after the Notice Deadline
Objection Deadline	60 days after the Notice Deadline
Motion for Final Approval Due	30 days prior to the Final Approval Hearing
Reply in Support of Motion for attorneys' fees, costs, and for a Service Award and Final Approval Motion	14 days prior to the Final Approval Hearing
Final Approval Hearing	July 19, 2024 at 10:00 am
Deadline to Submit Claims	90 days after the Notice Date

Upon application of the Parties and good cause shown, the deadlines set forth in this Order—except the final approval hearing—may be extended by order of the Court, without further notice to the settlement class. Any extension of the final approval hearing will require notice to the settlement class.

J. Termination of the Settlement and Use of this Order

If the Court does not provide final approval of the settlement, this Order shall become null and void and shall be without prejudice to the rights of the Parties, all of which shall be restored to their respective positions existing immediately before this Court entered this Order. In such event, the revised settlement shall become null and void and be of no further force and effect.

The clerk is ordered to provide copies of this order to all counsel.

Dated February 20, 2024.



Marsha J. Pechman
United States Senior District Judge